

MUTUAL EXCHANGES

1 SUMMARY

- 1.1 Members to consider reversing the decision to levy a charge on tenants moving by mutual exchange following additional research recently undertaken.

2 INTRODUCTION

- 2.1 At Housing Management Sub-Committee in January 2002, Members agreed to levy an administration fee to tenants moving through the mutual exchange route.
- 2.2 This agreement was made as the Council has a legal obligation to undertake landlord checks on efficiency and functioning of gas and electrical supplies and fittings, and it was felt that the tenants involved should pay rather than the Housing Revenue Account bearing the cost of these checks. This proposal was supported by the Tenants Associations at the time.

3 EMERGING ISSUES

- 3.1 Since this charge has been introduced further research has been undertaken by the Housing Policy Officer into the legality of the charge. This has revealed that although the charge itself is not illegal, to enforce it would be. The Housing act 1985 prescribes a number of grounds on which a landlord may withhold consent to a mutual exchange. An administration fee is not one of the grounds and therefore the Council cannot refuse a mutual exchange if the charge is not paid.
- 3.2 When the Audit Commission carried out the CPA Assessment in February 2004, they saw the charge as a particular policy weakness in our service and felt that it was insensitive to social inclusion. Although they could find no reason to stop the Council imposing a charge, they suggested that the charge be reduced or removed.
- 3.3 The Local Government Ombudsman is currently considering a complaint from a former tenant who has paid the charge and who is questioning its legality.
- 3.4 The Head of Service has delegated authority to waive any charge and has done so in this case, given the circumstances involved. The Ombudsman has been advised that the policy will be reviewed.

4 RISK IMPLICATIONS

- 4.1 If we continue to levy a charge there may be further complaints from tenants leading to another Ombudsman enquiry. Further examination of the

legislation now points to there being doubt about the levy of this charge and to avoid this risk the Head of Service believes it best to remove it altogether.

5 RESOURCE IMPLICATIONS

- 5.1 If the charge is stopped the HRA will need to bear the cost in the future. This would be around £1000 a year, based on an average yearly number of mutual exchanges.

6 LEGAL IMPLICATIONS

- 6.1 Requesting tenants to pay a mutual exchange charge amounts to the introduction of a further condition to Schedule 3 of the Housing Act 1985, which is not permissible under the statute.

7 RECOMMENDATION

- 7.1 It is proposed that the Committee **RESOLVES**

That the charge is removed for tenants who are arranging to move through a mutual exchange.

Steve Clarkson

Head of Revenue & Housing Management

Background Papers:-

None

For further information please contact Donna Upham on:-

Tel:- 01702 318030

E-Mail:- donna.upham@rochford.gov.uk